

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL BANKEN,

Plaintiff(s),

v.

CHRISTINE E. WORMUTH,

Defendant(s).

CASE NO. C24-06071-KKE

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
AND MOTION TO STRIKE

This matter comes before the Court on the Plaintiff's motion for summary judgment. Dkt. No. 34. Plaintiff is proceeding *pro se*. While Plaintiff requests oral argument, the Court concludes that oral argument is not necessary. Local Rules W.D. Wash. LCR 7(b)(4). Having considered the relevant record, the Court denies Plaintiff's motion as premature (Dkt. No. 34), and grants Defendant's Rule 56(d) request (Dkt. No. 37 at 5). The Court also denies Plaintiff's motion to strike as moot.<sup>1</sup> Dkt. No. 42.

# **I. BACKGROUND**

In May 2020, Plaintiff Daniel Banken filed a charge with the Equal Employment Opportunity Commission ("EEOC"), claiming age discrimination and retaliatory conduct based on incidents that occurred between 2010 and 2021. Dkt. No. 34 at 3–4, 45. In March 2024,

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<sup>1</sup> Plaintiff moved to prospectively strike any sur-reply by Defendant. Dkt. No. 42. Defendant never filed a sur-reply, and thus, this issue is moot.

1 Plaintiff filed suit against Christine E. Wormuth, the Secretary of the Army, in her official capacity,  
 2 alleging age discrimination in violation of the Age Discrimination in Employment Act (“ADEA”)  
 3 and retaliation in violation of Title VII. *Id.* On March 3, 2025, the Court dismissed Plaintiff’s  
 4 initial complaint and granted Plaintiff leave to amend within 30 days. Dkt. No. 33. Plaintiff  
 5 amended his complaint, and simultaneously filed a motion for summary judgment. Dkt. Nos. 34,  
 6 35. The parties have fully briefed the motion, and the matter is ripe for the Court’s consideration.  
 7 Dkt. Nos. 34, 37, 40.

## 8 II. ANALYSIS

9 Defendant argues that Plaintiff’s motion should be denied as premature. Dkt. No. 37 at 3.  
 10 Defendant also moved under Rule 56(d) for further discovery. *Id.* at 5. Plaintiff argues that  
 11 discovery has already been conducted and closed, pointing to the administrative proceedings that  
 12 occurred before Plaintiff filed this suit. Dkt. No. 36 at 2.

13 The Court agrees with Defendant. Plaintiff’s motion for summary judgment is premature  
 14 and should be denied on that basis. “Unless a different time is set by local rule or the court orders  
 15 otherwise, a party may file a motion for summary judgment at any time until 30 days after the  
 16 close of all discovery.” Fed. R. Civ. P. 56(b). That said, “[g]enerally, summary judgment is  
 17 inappropriate before the parties have had an opportunity for discovery.” *Sowa v. Ring & Pinion*  
 18 *Serv. Inc.*, No. 2:21-cv-00459-RAJ-BAT, 2021 WL 6334930, at \*2 (W.D. Wash. Sept. 9, 2021),  
 19 *report and recommendation adopted*, No. 2:21-cv-00459-RAJ-BAT, 2022 WL 73879 (W.D.  
 20 Wash. Jan. 7, 2022); *Encinas v. Univ. of Washington*, No. 2:20-CV-01679-TL, 2022 WL 4598083,  
 21 at \*8 (W.D. Wash. Sept. 30, 2022); *see also Mayes v. Int’l Markets Live*, No. 2:22-CV-01269-TL,  
 22 2023 WL 7212555, at \*6 (W.D. Wash. Nov. 2, 2023) (citing *Tex. Partners v. Conrock Co.*, 685  
 23 F.2d 1116, 1119 (9th Cir. 1982), *cert. denied*, 460 U.S. 1029 (1983)).  
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1 Here, no case schedule has been entered, and discovery has not commenced. Moreover,  
2 despite Plaintiff's contentions, Defendant is entitled to a fair opportunity to develop the record in  
3 *this* district court proceeding, even if related EEOC proceedings and investigations were completed  
4 before this litigation. *See* Dkt. No. 36 at 2; *Head v. Wilkie*, 784 F. App'x 503, 506 (9th Cir. 2019)  
5 (reversing the district court's denial of a Rule 56(d) motion for discovery because the plaintiff did  
6 not have a fair opportunity for discovery in an employment discrimination case); *Encinas*, 2022  
7 WL 4598083, at \*2, 8 (denying summary judgment as premature even though plaintiff previously  
8 filed an EEOC charge). *Cf. Despanie v. Henderson*, No. C 00-3028 CRB, 2001 WL 253213, at  
9 \*8 (N.D. Cal. Feb. 28, 2001) (denying plaintiff's Rule 56(d) motion because plaintiff had ample  
10 time to conduct discovery in a related *district court case*), *aff'd*, 34 F. App'x 350 (9th Cir. 2002).  
11 While the EEOC has a right to obtain evidence related to the investigated charge, its investigative  
12 authority is limited, and more information may be born out of discovery in this case. *See generally*  
13 *U.S. Equal Emp. Opportunity Comm'n v. Kaiser Found. Hosps.*, No. 2:19-mc--00175-JAK-FFM,  
14 2019 WL 7494905, at \*3 (C.D. Cal. Dec. 11, 2019) (outlining EEOC's investigative authority),  
15 *report and recommendation adopted*, No. 2:19-mc-00175-JAK-FFM, 2020 WL 70885 (C.D. Cal.  
16 Jan. 3, 2020). Similarly, the charging party does not have a right to discovery during the EEOC  
17 investigation. *See Dukes v. Wal-Mart Stores, Inc.*, No. 01-cv-02252-CRB (JSC), 2014 U.S. Dist.  
18 LEXIS 109436, at \*7 (N.D. Cal. Aug. 7, 2014). Therefore, the Court will not decide Plaintiff's  
19 motion for summary judgment on an undeveloped factual record.

20 Additionally, Defendant has satisfied the requirements under Rule 56(d). An opposing  
21 party may challenge a premature summary judgment motion by showing via "affidavit or  
22 declaration that, for specified reasons, it cannot present facts essential to justify its opposition,"  
23 after which the Court may defer or deny the motion and allow time for discovery. Fed. R. Civ. P.  
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1 56(d). Defendant has sufficiently identified the facts it hopes to elicit through discovery. Dkt. No.  
2 37 at 5–6, Dkt. No. 38.

3 The Court therefore denies Plaintiff’s motion for summary judgment without prejudice.  
4 Plaintiff may move for summary judgment after the factual record is developed, if appropriate.

### 5 **III. CONCLUSION**

6 The Court DENIES Plaintiff’s motion for summary judgment (Dkt. No. 34) and GRANTS  
7 Defendant’s Rule 56(d) request (Dkt. No. 37). The Court DENIES as moot Plaintiff’s motion to  
8 strike. Dkt. No. 42.

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10 Dated this 14th day of May, 2025.

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13 Kymberly K. Evanson  
14 United States District Judge  
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